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TOWNSEND AND TOWNSEND
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TWO EMBARCADERO CENTER,
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SAN FRANCISCO, CA 94111-3834

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OFFICE OF PETITIONS

In re Application of :
Kiran Gurudutt BELLARE, et al :
Application No. 09/728,724 : DECISION ON PETITION
Filed: December 1, 2000 :
Attorney Docket No. 021756-087400US :

This is a decision on the petition, filed June 25, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

The application became abandoned for failure to timely pay the publication fee on or before May 6, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed February 6, 2009, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on May 7, 2009. A Notice of Abandonment was mailed on May 13, 2009.

Petitioner asserts that the publication fee was submitted with the issue fee on February 17, 2009. In support of this assertion, petitioner has provided a copy of Form PTOL-85 with an authorization to charge the required publication fee.

A review of the written record indicates the Office attempted to collect the publication fee by charging the deposit account as authorized, however, the funds were insufficient.

Accordingly, since the publication fee could not be collected in a timely manner, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$1620 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).


Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
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 P. O. Box 1450
 Alexandria, VA 22313-1450

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 401 Dulany Street
 Alexandria, VA 22314

By facsimile: **(571) 273-8300**
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at (571) 272-6735.


Thurman K. Page
Petitions Examiner
Office of Petitions